

Letter of Findings: 08-0563
International Fuel Tax
For the Years 2004, 2005, 2006

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ISSUES

I. International Fuel Tax Agreement – Assessment.

Authority: IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IFTA Articles of Agreement, R1210.300 (1998, revised 2008); IFTA Procedures Manual, P540, 550 (1998, revised 2008).

Taxpayer protests the imposition of IFTA assessments for 2004, 2005, and 2006.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-6-4.1-23; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company that owns and operates a trucking business which hauls commodities and freight as well as mail for the U.S. Postal Service. The Indiana Department of Revenue ("Department") conducted an International Fuel Tax Agreement ("IFTA") audit of Taxpayer. The Department issued proposed assessments for fuel tax imposed under the IFTA for the tax years 2004, 2005, and 2006, along with penalty and interest for each of the years. Taxpayer protested the assessments and penalties. A hearing was held on the protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

Taxpayer generally protested the imposition of additional IFTA taxes for the tax years at issue, which the Department assessed under the authority of IC § 6-6-4.1-24(a).

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of motor fuel taxes. The purpose of IFTA is to ensure that fuel tax is paid or accrued to jurisdictions where the fuel is used. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority granted under IC § 6-8.1-3-14.

The basic procedure for calculating additional taxable gallons or credit gallons is to first calculate an overall MPG (miles per gallon) by dividing total miles traveled for all qualified vehicles by total gallons consumed for all qualified vehicles. Second, the total taxable miles traveled by qualified vehicles in each jurisdiction are divided by the overall MPG to determine the fuel consumed in each jurisdiction and upon which the tax is calculated. A credit is given for taxes already paid in another jurisdiction. If a trucker purchased less fuel in a jurisdiction than was consumed, the result is additional "taxable gallons." If a trucker purchased more fuel in a jurisdiction than was consumed, the result is "credit gallons."

IFTA Articles of Agreement, R1210.300 (1998) provides the standard for determining whether a proposed assessment may successfully be challenged by the taxpayer. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive." *Id.*

It is the taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases. As set out in IC § 6-8.1-5-4(a):

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. See also IFTA Procedures Manual, P540, 550 (1998, revised 2008).

The Department's audit found that Taxpayer had underreported the miles Taxpayer's trucks had traveled in IFTA member jurisdictions. The Department's audit concluded that Taxpayer had underreported jurisdiction miles because Taxpayer's source documentation – the time sheets submitted by Taxpayer's truck drivers for each trip – did not track total and jurisdiction miles, and while some records contained beginning and ending odometer readings, others did not. The Department's audit referred to the gaps in odometer readings as "gap miles."

Taxpayer protested the Department's mileage calculations and referenced section P540.200 of the IFTA Procedures Manual which, Taxpayer argues, permits the use of a mileage program to report miles – rather than the trip sheets - for IFTA purposes.

The Department's proposed assessment of additional fuel tax, under IC § 6-6-4.1-24(b), is deemed to be

"prima facie evidence that the department's claim for the unpaid tax is valid." That same section of the Indiana Code goes on to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." As noted above, IFTA Articles of Agreement, R1210.300 (1998, revised 2007), provides in part that, "[T]he burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive." (Emphasis added).

For the years at issue Taxpayer owned and operated numerous trucks. The Department's auditor sampled 12 vehicles for the 3rd quarter of 2004 and 9 vehicles for the 4th quarter of 2005. These quarters were selected because many of the jurisdictions that Taxpayer travels in were represented in these quarters. The Taxpayer agreed to the sampling procedure. Fewer vehicles were selected in 2005, because the overall number of trucks dropped in 2005 because Taxpayer had moved some of its vehicles to another base state for IRP and IFTA reporting purposes. The auditor did not find any under or over reporting of vehicles.

The Department's auditor noticed that Taxpayer did not write any mileage totals on its weekly time card and mileage sheets. Upon inquiry, the auditor was told that Taxpayer reported miles for IFTA returns based on a mileage program it utilized to determine trip miles. The auditor determined that this procedure accounted for the fact that reported miles were less than vehicle odometer readings. Taxpayer's mileage record keeping was determined to be inadequate because total miles and jurisdictional miles were not written on mileage reports; and because Taxpayer relied on a mileage program (Truck Master Logistics and PC Miler) and therefore most likely missed odometer miles. Taxpayer's fuel record keeping was determined to be inadequate because Taxpayer was missing fuel receipts in the sample quarters. Initially the auditor applied the statutory default 4 mpg to its calculations, but revised these calculations in a supplemental audit that accepted Taxpayer's quarterly reported numbers, thus substantially lowering Taxpayer's assessment.

The Department's audit made four IFTA adjustments:

(1) Audited Total Miles – The auditor found additional total miles for all quarters of the audit period. The additional total miles came from additional miles found from the mileage reports and also additional total miles from "gap miles" found in the sample quarters (see below). Total miles were obtained by totaling each jurisdiction's audited miles together for all quarters of the audit period and also adding the miles for the non IFTA jurisdiction of the District of Columbia. No changes were made to this adjustment in the supplemental audit.

(2) Audited Jurisdiction Miles – In order to determine the ratio or percentage by which Taxpayer underreported its miles for the sample vehicles in the 2004 and 2005 sample quarters, the auditor divided the audited jurisdictional miles by the reported jurisdiction miles for these sample quarters. This calculation resulted in an "error factor"; i.e., the percentage by which Taxpayer underreported its jurisdiction miles. The jurisdiction miles error factors for 2005 were projected to 2006 and used to obtain audited jurisdictional miles for all 2006 quarters. The auditor entered trips from Taxpayer's mileages documents into the mileage program for sample vehicles for the sample quarters. The auditor found "gap miles" in both sample quarters. The auditor apportioned the "gap miles" by first dividing each vehicle's audited jurisdictional miles from the mileage reports by each vehicle's audited total miles from mileage reports for the sample quarters to obtain the jurisdiction's percentage of audited total vehicle's miles. Jurisdiction's total for "gap miles" per vehicle were obtained by multiplying each vehicle's "gap miles" by the jurisdiction's percentage of audited total vehicle miles. The auditor summed each vehicle's jurisdictional miles from the "gap miles" together for the sample quarters. Audited jurisdictional miles for the sample vehicles for the sample quarters were obtained by summing the audited jurisdictional miles to the jurisdictional miles from the "gap miles." The audited jurisdictional miles for all quarters of the audit period were obtained by multiplying the reported jurisdictional miles by the jurisdictional mileage error factors for each specific year. No changes were made to this adjustment in the supplemental audit.

(3) Audited Total Gallons – Initially, the audited additional total gallons from the additional total miles were obtained by dividing the audited additional total miles by the statutory 4 miles per gallon (mpg) per IFTA Article A550. The auditor entered the on-road diesel fuel receipts for each jurisdiction for all vehicles for the sample quarters. In most cases, Taxpayer was missing fuel receipts; however, the auditor found additional gallons for some jurisdictions from the fuel receipts for 2005 and 2006, and these were totaled for each quarter. In the supplemental audit, the auditor used the quarterly reported mpg instead of the statutory 4 mpg. Therefore, the audited total gallons for all quarters of the audit years were obtained by summing the reported total gallons, the audited total additional jurisdictional tax-paid gallons, and the audited additional total gallons from the additional total miles. This revised calculation reduced Taxpayer's overall base assessment by approximately 20 percent.

(4) Audited Jurisdiction Tax Paid Gallons – Error factors for all vehicles for the sample quarters were obtained by dividing the audited jurisdictional tax-paid gallons by the reported jurisdictional tax-paid gallons. The auditor entered on-road diesel fuel receipts for each jurisdiction for all vehicles for the sample quarters. The auditor was missing many invoices in the sample quarters, and tax-paid credit was only given on receipts that the auditor could physically examine. The audited jurisdictional tax-paid gallons for the non-sample quarters were obtained by multiplying the reported jurisdictional tax-paid gallons by the jurisdictional tax-paid

gallons error factors for each specific year. Fuel receipts were not examined for any quarters in 2006, therefore the jurisdictional tax-paid gallons error factors for the 4th quarter of 2005 were projected to all quarters of 2006 to obtain that year's audited jurisdictional tax-paid gallons. No changes were made to this adjustment in the supplemental audit.

The Department's audit recommended that Taxpayer record total miles traveled in each jurisdiction and total trip miles on their mileage reports. In addition, the Department recommended that the mileage obtained through use of Taxpayer's mileage software program should be verified against the odometer readings on the trip reports to ensure that all miles are captured and to eliminate "gap miles." Further, the Department recommended that Taxpayer retain all fuel receipts for a period of four years from the date of the return or when the return is filed, whichever is later.

According to the IFTA Procedures Manual (last revised January 2008):

***P540 DISTANCE RECORDS**

.100 Licensees shall maintain detailed distance records which show operations on an individual-vehicle basis. The operational records shall contain, but not be limited to:

.005 Taxable and non-taxable usage of fuel;

.010 Distance traveled for taxable and non-taxable use; and

.015 Distance recaps for each vehicle for each jurisdiction in which the vehicle operated.

.200 An acceptable distance accounting system is necessary to substantiate the information reported on the tax return filed quarterly or annually. A licensee's system at a minimum, must include distance data on each individual vehicle for each trip and be recapitulated in monthly fleet summaries. Supporting information should include:

.005 Date of trip (starting and ending);

.010 Trip origin and destination;

.015 Route of travel (may be waived by base jurisdiction);

.020 Beginning and ending odometer or hubodometer reading of the trip (may be waived by base jurisdiction);

.025 Total trip miles/kilometers;

.030 Miles/kilometers by jurisdiction;

.035 Unit number or vehicle identification number;

.040 Vehicle fleet number;

.045 Registrant's name; and

.050 may include additional information at the discretion of the base jurisdiction.

(Emphasis added).

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its jurisdiction miles. Taxpayer is correct that IFTA Manual Procedures permit the use of a software system to account for Taxpayer's miles and fuel per IFTA Procedures Manual P540.200. Materials Taxpayer submitted after the hearing include detailed road and fuel usage reports for each of the sample vehicles in each of the sample quarters generated by the software system Taxpayer uses. However, the very procedure Taxpayer references, IFTA Procedures Manual P540.200, states that "at a minimum" Taxpayer's supporting information must include, among other required data, beginning and ending odometer readings unless waived by the base jurisdiction, which is not the case here. In the instant case, the Department's audit found gaps in Taxpayer's reporting of beginning and ending odometer numbers. In the absence of more complete source documentation, the Department's original audit is reasonable, supported by law, and IFTA Audit Manual procedures. Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, R1210.300 (1998).

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

The Department assessed the ten percent negligence penalty for the tax years in question. Taxpayer references its exhaustive record keeping and long-standing reputation.

The Department refers to IC § 6-6-4.1-23, which states:

(a) If a person:

(1) fails to file a return for the tax due under this chapter on or by the due date for the return;

(2) fails to pay the full amount of tax shown on the person's return on or by the due date for the payment; or

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

the person is subject to a penalty.

(b) The penalty for a failure described in subsection (a) is the penalty calculated under the penalty provisions of the International Fuel Tax Agreement entered into by the department under [IC 6-8.1-3-14](#).

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or

diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-6-4.1-23. Taxpayer has established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c).

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest of the IFTA assessments is denied.

Taxpayer's protest of the negligence penalty is sustained.

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